IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 565 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MEHBOOB KHAN HUSSAIN KHAN PATHAN

Appearance:

1. Special Civil Application No. 565 of 1994

MS UTPALA VORA for MR YOGESH S LAKHANI for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/04/2004

ORAL JUDGEMENT

1. In this petition under Article 227 of the Constitution, the petitioner-Corporation has challenged the award of the Labour Court, whereby it was ordered that the respondent driver shall be reinstated with 50% backwages. There is no dispute about the fact that the respondent driver was in service of the petitioner since about 17 years and he was dismissed on account of the proved misconduct of absence without leave for the period

from 1.1.1988 to 25.3.1988. The departmental enquiry preceding the order of dismissal was not challenged. However, the explanation for absence without leave as tendered by the respondent was to the effect that he was required to stay with his mother who was seriously sick at the relevant time. No other record of any other misconduct was cited.

2. At the time of admitting the petition, the impugned order was stayed only as regards backwages.

3. The learned counsel Ms.Utpala Vora, appearing for the petitioner, submitted that the impugned award, to the extent it ordered payment of 50% of backwages, ought to be modified in view of the fact that serious misconduct of absence without leave for a long period was proved. The learned counsel relied upon the Division Bench judgment of this Court in MAGANBHAI L. CHAUHAN v. DIVISIONAL CONTROLLER, GSRTC [1999 (1) G.L.H.527] wherein it is observed that Labour Court, while interfering with the order of termination passed by the employer and substituting it by reinstatement with 50% backwages, was required to give reasons which are acceptable. It was, however, a case in which the past record of 15 occasions of the workman remaining absence without leave was established. In the facts of the present case, no such earlier record is cited or relied upon and the Labour Court appears to have, in due exercise of its powers under Section 11-A of the Industrial Disputes Act, 1947, interfered with the order of punishment.

3. The learned counsel for the respondent, Mr.Rathod, submitted that, for the absence of about 54 days, the respondent had suffered loss of 50% of backwages for about five years of pendency of the Reference and that, in view of the otherwise clear record of service of the respondent, the grant of 50% of backwages should not be interfered. He, however, clearly conceded that the Court may reduce the per centage of backwages if thought fit.

4. Having regard to the aforesaid facts and circumstances, no reason is made out to interfere with the impugned award and order in exercise of the extraordinary jurisdiction of this Court under Article 227 of the Constitution, particularly when there is neither improper exercise of jurisdiction nor failure of justice. However, in view of the concession fairly made for the respondent, the order of backwages is reduced to 30% and the impugned award shall stand modified accordingly.

5. Accordingly, the petition is partly allowed and the impugned order is modified to the extent that the respondent shall be entitled to 30% of backwages. It was fairly stated by the learned counsel for the petitioner that the amount of backwages shall now be paid within a period of eight weeks from today. The rest of the award remains intact. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)